

REMARKS

Applicants stand by all the arguments of record, particularly those regarding the §103 rejections submitted on February 7, 2005. These are incorporated by reference herein. Furthermore, applicants acknowledge the examiner's withdrawal of the anticipation rejection per paragraph one of the office action.

The following comments address the feature believed to be overlooked in the examiner's comments on the outstanding obviousness rejection.

Even assuming that the examiner's position were correct (applicants do not agree, as indicated above), claims of this application are patentable because the data in the table submitted on April 12, 2004 rebut the examiner's alleged prima facie case of obviousness.

As is clear of record, the one compound the examiner relies on from Ohno is a multipotassium salt. The claims of this application recite only sodium salts. Even if there were a prima facie case of obviousness, the data in the mentioned table firmly establish, commensurate in scope with the claims, that sodium salts in general have an unexpectedly superior property over potassium salts, namely, lower toxicity as measured by LD₅₀. The data in the table showed that, in every case, the LD₅₀ for a sodium salt is significantly higher than that for the compound of exactly the same structure except potassium substituted for sodium. Nothing in any of the references even remotely suggests this result.

The data encompass compounds having four or five sulfo groups, compounds having methine substituted by alkyl, sulfoalkyl, and sulfoalkylthio (as well as a cyclic feature). The data also encompass both ethylene and butylene linkages to the sulfo group on the ring nitrogen atom.

Because the properties are clearly significant (toxicity being a main consideration for any compound to be administered to a live body), and clearly unexpected, if there were a prima facie case of obviousness, the data of record would firmly rebut it.

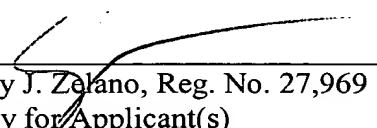
For the record, applicants note that Ohno is not analogous art. The examiner has not given any reason why a skilled worker, upon reading one of the secondary references such as Licha which allegedly overlaps with the claimed compounds for purposes of IR imaging, would

be led to a non-IR imaging reference for purposes of selecting cyanine dyes other than those Licha has already selected. Because Ohno does not relate to IR imaging, there would be no motivation for a skilled worker to rely on any of its teachings. It is for this reason, in addition, that Ohno is not analogous art.

A copy of the latest office action in CIP application 10/149,917 is being filed herewith.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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